

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LUCINDA JANE WARD and
KIMMIE YVONNE PUFFER Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TERESA MARIE PUFFER,

Respondent-Appellant,

and

KEITH DAVID PUFFER and DAVID SMITH,

Respondents.

In the Matter of KIMMIE YVONNE PUFFER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KEITH DAVID PUFFER,

Respondent-Appellant,

and

TERESA MARIE PUFFER,

Respondent.

UNPUBLISHED

June 20, 2006

No. 266967

Muskegon Circuit Court

Family Division

LC No. 04-033231-NA

No. 266968

Muskegon Circuit Court

Family Division

LC No. 04-033231-NA

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from an order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j).¹ We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, the trial court must terminate respondent's parental rights unless it determines that to do so is clearly not in the children's best interests. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

The trial court did not err when it terminated respondents' parental rights pursuant to MCL 712A.19b(3)(g) and (j). When the minor children were taken into care, they were filthy, had head lice, had extremely high levels of lead in their blood, were malnourished, had no beds to sleep on and were sleeping in chairs, and had developmental delays. Respondents were unaware of the basics of cleanliness and nutrition. They did not know how to address the children's lead levels or the children's developmental delays. Services had been in place for approximately a year before the court took temporary wardship over the minor children. When the court did take the minor children into temporary care, it ordered psychological examinations of respondents, and services were tailored to address respondents' needs, specifically their cognitive limitations.

Although respondent-mother did participate in the services offered to her, she was unable to effectively grasp the concepts that were taught her and would not be able to provide the minor children with their basic needs, including nutrition, health, safety and development. There were no other services available that respondent-mother could have been provided that would have been beneficial. Respondent-father seemed to grasp concepts better than respondent-mother, but he did not gain the skills necessary to provide his minor daughter with proper care and custody or to keep the minor child safe. Respondent-father did obtain employment and a home that appeared to be physically suitable for the children, but he did not seem to understand the scope of the parental responsibilities that he shared with respondent-mother. Despite clear evidence that respondent-mother could not parent the minor children on her own, respondent-father testified that she could. Respondent-father was provided with information but claimed that he was unable to read it. He did not, however, ask anyone to read it to him or to go over it with him even though several relatives lived nearby who could have assisted him with the handouts that were provided.

¹ Although respondent-father states that the court also terminated his parental rights pursuant to MCL 712A.19b(3)(c)(i), the court specifically found that this subsection was not met.

Failure to benefit from services can be considered when addressing whether the statutory conditions are met for purposes of termination of parental rights. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). The trial court did not err when it found clear and convincing evidence that respondents had not provided proper care and custody to the children in the past and did not benefit from the services offered so that they could improve their parenting skills to the point where they could provide proper care and custody within a reasonable time, considering the children's ages. There continued to be a reasonable risk of harm to the children if returned to respondents' custody.

The trial court also did not clearly err in its best interests determination. MCL 712A.19b(5). Although there was a bond between both respondents and their children, this bond was clearly outweighed by the children's need for permanency and stability as well as their need to be kept safe and provided with the assistance needed for their development.

Respondent-mother also argues that her due process rights were violated because the trial court terminated her rights solely on the basis that she was not sufficiently intelligent to raise her children. Respondent-mother argues that additional services should have been provided to assist her in being reunited with the minor children because she was disabled, poor, uneducated and susceptible to class and cultural bias.

Whether the procedure followed in a child protection case comports with due process is a question of law subject to de novo review. *In re CR*, 250 Mich App 185, 203; 646 NW2d 506 (2001). "A procedural due process analysis requires a court to consider '(1) whether a liberty or property interest exists which the state has interfered with, and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient.'" *Id.* at 204, quoting *In re AMB*, 248 Mich App 144, 209; 640 NW2d 262 (2001). "Due process is flexible and calls for such procedural protections as the particular situation demands." *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993), quoting *Mathews v Eldridge*, 424 US 319, 332, 334; 96 S Ct 893; 47 L Ed 2d 18 (1976) (citation omitted). In child protective proceedings, the focus is the protection of the child. *Brock*, *supra* at 107-108.

While it is true that respondent-mother has a fundamental liberty interest in managing her children, the trial court did not violate her due process rights. Respondent was provided with notice, a parent-agency agreement, numerous services over several years both before and after the minor children were removed from her care, including services that addressed her cognitive disabilities, and a hearing to determine whether her parental rights should be terminated. All of the parties involved took into account respondent-mother's cognitive limitations and attempted to assist her to gain the skills that she would need to provide proper care of the minor children and to ensure that they would not be harmed if they were in her care. The trial court took into account all of the services provided to respondent-mother and reached the conclusion that additional services would not assist her in learning appropriate parenting skills. Based on the evidence presented at trial, the court found that respondent-mother would be unable to provide the minor children with an environment that would not be harmful to them. Respondent-mother's due process rights were not violated when the trial court terminated her parental rights to the minor children.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Patrick M. Meter